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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1961.

NO. 245

DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS and THEODORE J. ISAACS, Director of Revenue,

*Defendants-Appellants.*

vs.

UNITED STATES OF AMERICA and OLIN MATHIESON CHEMICAL CORPORATION,

*Plaintiffs-Appellees.*

(APPEAL FROM THE UNITED STATES DISTRICT COURT, FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.)

## APPELLANTS' BRIEF IN REPLY TO THE SOLICITOR GENERAL'S SUGGESTION THAT THIS COURT NOTE JURISDICTION, VACATE JUDGMENT AND REMAND THIS CAUSE.

WILLIAM G. CLARK,
Attorney General of the State of Illinois,
160 North La Salle Street, Suite 900,
Chicago 1, Illinois (FInancial 6-2000),
*Attorney for Defendants-Appellants.*

WILLIAM C. WINES,
RAYMOND S. SARNOW,
A ZOLA GROVES,
Assistant Attorneys General,
*Of Counsel.*

# INDEX.


PAGE

Appellants' Brief in Reply to the Solicitor General's Suggestion that this Court note jurisdiction, vacate judgment and remand this cause ..... 1

APPENDICES.

I. Three Judge Court ..... 11

II. Modified opinion of Justice House in People ex rel. Holland Coal Company v. Isaacs ..... 14

CASES CITED.

Alabama v. King & Boozer, 314 U. S. 1 ..... 3

People ex rel. Holland Coal Co. v. Isaacs ..... 2, 5, 7, 9

STATUTES CITED.

Ill. Rev. Stats. 1933, Ch. 120, Pars. 440-453, p. 2453 ..... 3

Ill. Rev. Stats. 1959, Ch. 120, Pars. 440-453, Vol. II, p. 1388 ..... 3

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## APPELLANTS' BRIEF IN REPLY TO THE SOLICITOR GENERAL'S SUGGESTION THAT THIS COURT NOTE JURISDICTION, VACATE JUDGMENT AND REMAND THIS CAUSE.

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The Solicitor General's "Memorandum in Response to Jurisdictional Statement" thus concludes:

> "We believe that orderly procedure would be served if the District Court were afforded an opportunity to consider whether the injunction should be vacated or modified by reason of the events which have occurred since it was issued. Accordingly, we respectfully suggest that this Court note probable jurisdiction, vacate the judgment below and remand the cause to the District Court for further consideration in the light of subsequent developments. We submit, however, that the injunctive provisions of the judgment below should be continued in effect until further order of the District Court."

The Solicitor General's suggestion was evoked by the decision of the Supreme Court of Illinois on May 10, 1961, in *People ex rel. Holland Coal Co.* v. *Isaacs* (not yet officially or unofficially reported, original opinion reprinted in full Appendix III to Appellants' Jurisdictional Statement), **originally** held unconstitutional **in full** Illinois' 1955 Act exempting the gross receipts from sales to Illinois, her municipalities **AND CHARITIES** from the measure of Illinois' Retailers Occupation Tax Act. Since the District Court's opinion in this case was based solely upon that court's holding that the 1955 exemption invidiously discriminated against and unconstitutionally infringed Federal sovereignty, the Solicitor General made the suggestion reproduced above.

**The September 22, 1961, decision in the Holland Coal Co. case.**

But on September 22, 1961, *after* the Solicitor General filed his memorandum in this Court, the Supreme Court of Illinois modified its opinion in *People ex rel. Holland Coal Co.* v. *Isaacs*, not yet officially or unofficially reported, *original opinion*, Appendix III to Appellant's Jurisdictional Statement, *modified and presently standing opinion*, Appendix II to this brief.

In the opinion as modified and as now standing, the Supreme Court of Illinois adheres to its view that Illinois'

exemption of sales to the State, her agencies and instrumentalities is unconstitutional but holds that the exemption of sales to **PRIVATE CHARITIES** is constitutional, separable and valid.

Illinois' Retailers' Occupation Tax Act, first enacted in 1933, has always laid a tax upon the business of selling tangible personal property at retail, the tax being measured by a percentage that has varied but is presently 3½ per cent of the gross receipts from such sales.

In 1941, this court, deciding *Alabama v. King & Boozer*, 314 U. S. 1, held that an otherwise constitutional tax laid by Alabama upon vendors of personal property and measured by the gross receipts from the sale of such property did not infringe Federal sovereignty merely because the tax was measured by receipts from sales of personal property to contractors who used that property in the performance of contracts with the United States even though the United States absorbed and bore the economic burden of the tax under "cost plus contracts". This court has never overruled *Alabama* v. *King & Boozer*, 314 U. S. 1.

The United States continues to absorb and bear the burden of all retailers' occupation taxes that are passed on to its contractors by vendors who are subject to State taxes measured by the gross receipts from retail sales *so long as the State tax does not discriminate between sales to the United States Government and contractors with that Government, on the one hand, and sales to purchasers other than the United States Government and its contractors, on the other hand.*

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(1) Illinois Rev. Stats. 1933, Chap. 120, Pars. 440, 453 p. 2453.

(2) Illinois Rev. Stats. 1959, Chap. 120, Pars. 440-453, Vol. II, p. 1388.

But in 1953, the General Assembly of Illinois amended Section 2 of the Illinois Retailers' Occupation Tax Act (Ill. Rev. Stats. 1953, 1955, 1957, 1959, Ch. 120, Par. 442, Vol. II, p. 1390) so as to exempt from the measure of the tax

> "the proceeds of such sales to the State of Illinois, any county, political subdivision or municipality thereof, or to any instrumentality or institution of any of the governmental units aforesaid, and excluding the proceeds of such sales to any corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious or educational purposes". (Ill. Rev. Stats. 1959, Ch. 120, Par. 441, Vol. II, p. 1389.)

From the effective date of this 1953 Amendment to the Illinois Retailers' Occupation Tax Act, July 1, 1953, until the date of the temporary injunction entered in this case, September 1, 1960, Illinois' Department of Revenue and her successive Directors of that Department continued to collect the Illinois retailers' occupation tax with respect to sales to the United States Government and its contractors although they *exempted* similar sales to the State of Illinois, her instrumentalities, municipalities and charities.

On February 24, 1961, a bench of three judges in the District Court for the Northern District of Illinois entered the judgment order appealed from and pronounced the opinion of which review is sought on this appeal.

The District Court's judgment now appealed from

> "permanently restrained and enjoined from the making or enforcing any assessment or collection under, or in any other way applying or enforcing the provisions of Section 2 of the Illinois Retailers' Occupation Tax Act, Act of June 28, 1933, (Ill. Rev. Stat. 1959, Ch. 120, Sec. 441), against the plaintiff, Olin Mathieson Chemical Corporation, or anyone else with respect to any sales of tangible personal property

which any of them have made, or hereafter may make to the United States, or any of its agencies or instrumentalities, or with respect to any proceeds received from the United States with respect to any such sales."

It will be noted that the injunction appealed from does **NOT** provide that the injunction entered is to stand **only so long as Illinois does not exempt sales to the United States, her instrumentalities and contractors from the measure of the tax.** On the contrary, the terms of the injunction are categorical. Illinois' state taxing officials are *perpetually* enjoined from *ever* collecting taxes measured by the receipts of sales to the United States, her instrumentalities and contractors **whether or not Illinois continues to exempt from the measure of that tax sales to herself, her instrumentalities, municipal corporations and charities.**

**On May 10, 1961 the Supreme Court of Illinois held Unconstitutional Illinois' Statutory Exemption of Sales to State. Municipal and Charitable Instrumentalities. But on September 22, 1961, that court modified its opinion. It now holds the exemptions of sales to the STATE AND MUNICIPALITIES unconstitutional but holds the exemption of CHARITIES valid.**

On May 10, 1961, the Supreme Court of Illinois, speaking unanimously, decided the case of *The People of the State of Illinois ex rel. Holland Coal Company* v. *Isaacs*, not yet reported, that Court's No. 36480, *original* opinion reprinted in full, Appendix III, to Appellant's Jurisdictional Statement, agreeing.

In that case, the Supreme Court of Illinois agreed with the opinion of the District Court in the instant case, held that *if* the 1953 Amendment exempting the proceeds of sales to Illinois, her municipalities and charities was constitu-

tional, that exemption discriminated against the Federal Government, but held that *the entire exemption,* both with respect to sales to the State government and municipalities, **AND TO CHARITIES,** *was itself unconstitutional.*

The Supreme Court of Illinois held invalid those regulations of the Department of Revenue that purport to exempt from the tax sales to Illinois, her municipalities and charities.

The concluding paragraph of the original opinion of the Supreme Court of Illinois was as follows:

> "The judgment of the circuit court of Cook County is reversed. However, we see no purpose in remanding the cause for the issuance of a writ of *mandamus* directing the respondent to expunge the offending departmental regulations. [those regulations] Since the statutes upon which the regulations are predicated are invalid, the rules themselves become void and we will not presume that respondent will attempt to act illegally in the face of our finding that the exemption provisions are unconsitutional.
>
> *Judgment Reversed."*

On June 9, 1961, appellants filed a motion in the District Court to vacate the injunction or so to modify it that it will not inhibit the collection of the Retailers' Occupation tax from sales to the United States, her instrumentalities and contractors so long as Illinois does not indulge the discrimination that the District Court has held invidious and to work an infringement of Federal sovereignty.

On August 21, 1961, the District Court denied appellants' motion addressed to that court, which is reprinted as Appendix I to the instant motion.

The District Court gave as its only reason for denying the motion its statement that

> "It is our opinion that we are powerless to consider the merits of the defendants' petition and the motion (of certain charities) to intervene because we have lost jurisdiction to do so"

because of appellants' "Notice of Appeal to the Supreme Court of the United States" from the District Court's final judgment of February 24, 1961, in this case.

On August 6, 1961, the Solicitor General filed his *Memorandum in Response to Jurisdictional Statement* in this case.

The last paragraph of that response, together with a footnote, is as follows:

> "We believe that orderly procedure would be served if the District Court were afforded an opportunity to consider whether the injunction should be vacated or modified by reason of the events which have occurred since it was issued. Accordingly, we respectfully suggest that this Court note probable jurisdiction, vacate the judgment below and remand the cause to the District Court for further consideration in the light of subsequent developments.[6] We submit, however, that the injunctive provisions of the judgment below should be continued in effect until further order of the District Court.
>
> We suggest the vacation of the District Court's judgment, notwithstanding our agreement with the decision below, so that the cause need not be retained on this Court's docket pending further consideration of the case in the court below."

**The Modified Opinion of the Supreme Court of Illinois, of September 22, 1961, not reported, Appendix II, p. 14 post.**

We have noted, on September 22, 1961, the Supreme Court of Illinois modified its opinion in the *Holland Coal Company* case. The complete text of the opinion as modified

and as presently standing, not yet officially or unofficially reported, is reprinted as Appendix II to this Motion.

The modified and presently standing opinion adheres to the holding that the 1955 exemption is unconstitutional with respect to sales to the State of Illinois, her agencies and municipal corporations because by enacting that exemption, the General Assembly unwittingly enacted an "invidious discrimination" against the Federal government.

But the Court now holds that exemption to **private charities** is **not** an unconstitutional preferment of the State, her instrumentalities and municipal corporations, is therefore constitutional, is severable and is effective.

This Court will note that the District Court's opinion holds that the 1955 exemption discriminated against the Federal government for each of two separate reasons: *first*, so the District Court held, it discriminated against the Federal government by exempting sales to Illinois, her instrumentalities and municipal corporations, and *second*, so the District Court further held, even sales to it discriminated against the Federal government *merely by exempting even private non-governmental charities.*

The District Court's original opinion declares (Appendix I to Jurisdictional Statement, pp. 39-40):

> "Not only is the Federal Government discriminated against as a governmental unit in contrast to the exemption granted 'the State of Illinois, any county, political subdivision or municipality thereof, or to any instrumentality or institution of any of the governmental units aforesaid'
>
> But it is further discriminated against in contrast with many non-governmental entities, specifically
>
> 'any corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious or educational purposes.'"

Before the Supreme Court of Illinois modified its opinion in the *Holland Coal Company* case, the Attorney General of Illinois had prepared and had dispatched to the printer its concurrence in the Solicitor General's suggestion "that this Court note probable jurisdiction, vacate the judgment below and remand the cause to the District Court for further consideration in the light of subsequent developments. We submit, however, that the injunctive provisions of the judgment below should be continued in effect until further order of the District Court."

But that suggestion is no longer appropriate; for the District Court has already held that the 1955 exemption bars imposition of a tax upon sales to the Federal government or its contractors so long as Illinois exempts *even private, non-governmental charities* whether it does or does not continue to exempt sales to the Federal Government or its contractors.

This case is one of urgency and moment.

Since the Solicitor General concedes that the case is one in which this Court "should note probable jurisdiction", we ask the Court to note probable jurisdiction.

Respectfully submitted,

WILLIAM G. CLARK,
Attorney General of the State of Illinois,
160 North La Salle Street, Suite 900,
Chicago 1, Illinois (Financial 6-2000),
*Attorney for Defendants-Appellants.*

WILLIAM C. WINES,
RAYMOND S. SARNOW,
A. ZOLA GROVES,
Assistant Attorneys General,
*Of Counsel.*

## CERTIFICATE OF SERVICE.

I, Raymond S. Sarnow, Assistant Attorney General of the State of Illinois and a member of the Bar of the Supreme Court of the United States, hereby certify that, on or before the 3rd day of October, 1961, I served copies of the foregoing Appellants' Brief in Reply to the Solicitor General's Suggestion that this Court note Jurisdiction, vacate Judgment and Remand this cause on the appellees, as follows:

By mailing of five copies of Appellants' Brief in Reply to the Solicitor General's Suggestion that this Court note Jurisdiction, vacate Judgment and Remand this cause to

Honorable Robert Kennedy, Attorney General of the United States
Department of Justice
Washington (25) D. C.

Honorable Archibald Cox, Solicitor General,
Department of Justice
Washington (25) D. C.

James P. O'Brien, Esq.
United States Attorney for the Northern District of Illinois
United States Courthouse, Room 450
Chicago, Illinois

John H. Caruthers, Esq.
East Alton, Illinois
Attorney for Olin Mathieson Chemical Corporation

Thomas F. Scully
Prudential Building, 29th Floor
Chicago, Illinois.

in duly addressed envelopes, postage prepaid.

RAYMOND S. SARNOW,
Assistant Attorney General of the
State of Illinois,
*One of Attorneys for Appellants.*

# APPENDIX I.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | |
|---|---|
| United States of America and Olin Mathieson Chemical Corporation,<br><br>vs.<br><br>Department of Revenue of the State of Illinois and Theodore J. Isaacs, Director of Revenue. | 60 C 1365 |

Before KNOCH, Circuit Judge, LABUY and ROBSON, District Judges.

Defendants have filed a petition requesting that the permanent injunction entered in the above cause be vacated because of the effect of a recent decision of the Supreme Court of Illinois, *Peo. ex rel. Holland Coal Co.* v. *Isaacs, et al.*, (not yet officially reported, that court's No. 36480). In addition, certain educational, religious and charitable institutions have filed a motion for leave to intervene as amici curiae.

The Illinois Supreme Court declared unconstitutional and void the statutory section exempting from the retailers' occupation tax those sales which were made to the State of Illinois, her counties, political instrumentalities and subdivisions, municipalities and charities. Pursuant to that

ruling, the Department of Revenue, through its Director, has deleted from its Rules and Regulations any provision which gave effect to such exemption.

It is urged that in the light of that decision and the new Rules and Regulations, the injunction heretofore entered restraining collection of the tax on sales made to the United States be vacated or dissolved or, in the alternative, that said injunction be modified to provide that defendants and all other persons subject to that injunction are not restrained or enjoined from collecting any retailers occupation tax with respect to the plaintiff, Olin Mathieson Chemical Corporation, or any one else, with respect to sales of tangible personal property to the United States. It is contended that continued compliance with the injunction results in discrimination favoring the United States and those with whom it deals.

A notice of appeal to the Supreme Court of the United States from the final judgment entered by this court was filed April 24, 1961. The defendants' petition was filed June 6, 1961. The United States, by motion to dismiss said petition, states that this court has lost jurisdiction by virtue of the filing of the notice of appeal.

The federal government cites and relies upon a three-judge district court opinion in *Schempp* v. *School Dist.*, (E. D. Pa., 1959) 184 F. Supp. 381, wherein the court held that the filing of a notice of appeal to the Supreme Court of the United States divests the trial court of jurisdiction. We are persuaded by the reasoning in that case and the cases cited therein.

It is our opinion that we are powerless to consider the merits of the defendants' petition and the motion to intervene because we have lost jurisdiction to do so.

Accordingly, the motion to dismiss for lack of jurisdiction is sustained. It follows necessarily that the petition for intervention as amici curiae filed on behalf of certain educational, religious and charitable institutions must also be

denied. An order in accord therewith has this day been entered.

WIX G. KNOCH,
*Judge, Circuit Court of Appeals.*

WALTER J. LA BUY,
*Judge, District Court.*

EDWIN A. ROBSON,
*Judge, District Court.*

Dated: August 21, 1961

## APPENDIX II.

### (Holland Coal Opinion.)

Docket No. 36480—Agenda 46—March, 1961.

*The People ex rel. Holland Coal Company, Appellant.* v.

*Theodore J. Isaacs, Director of Revenue, Appellee.*

MR. JUSTICE HOUSE delivered the opinion of the court:

Holland Coal Company, an Illinois corporation, brought this action against the Director of the Department of Revenue seeking a declaratory judgment that certain exemption provisions of the Retailers' Occupation Tax Act and the Illinois Use Tax Act are unconstitutional and void and requesting the issuance of a writ of *mandamus* compelling the director to expunge departmental rules and regulations implementing the exemptions. On motion of the Director, the circuit court of Cook County struck the relator's complaint. The latter elected to abide by its pleading and the court thereupon dismissed the suit with prejudice, on the merits and at relator's cost. The revenue and the constitutionality of statutes are involved.

In 1953 section 2 of the Retailers' Occupation Tax Act was amended to exempt from the measure of the tax "the proceeds of such sales to the State of Illinois, any county, political subdivision or municipality thereof, or to any instrumentality or institution of any of the governmental units aforesaid, and excluding the proceeds of such sales to any corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious or educational purposes". (Ill. Rev. Stat. 1953, chap. 120, par. 441.) When the Use Tax Act was enacted in 1955, the legislature employed identical language to exempt from such tax the State, its counties, political subdivisions, municipalities, governmental instrumentalities or institutions and charities. (Ill. Rev. Stat. 1955, chap. 120, par. 4393.)

Rules and regulations have been promulgated by the Department of Revenue to implement the exemptions provided by the statutes.

The relator contends that the exemption provision in the Retailers' Occupation Tax Act violates the uniformity provision of section 1 of article IX of the Illinois constitution. It argues that since the tax is imposed upon persons engaged in the business of selling tangible personal property at retail, a lack of uniformity is created within this class because some retailers will be taxed on none or less than all of their sales while others will pay on the full amount of their sales depending on the character of purchaser.

The uniformity provision of section 1 of article IX provides that a tax must be "uniform as to the class upon which it operates." Since the exemption provision does not operate in a vacuum, a determination of whether it creates a lack of uniformity cannot rest merely on an examination of the statute.

In stating the specific class upon which a tax is to be imposed, the legislature may define a general class and specifically remove a subclass (see *Bode* v. *Barrett*, 412 Ill. 204; *Modern Dairy Co.* v. *Department of Revenue*, 413 Ill. 55.) or it may merely define a subclass without naming the general class. See *People* v. *Deep Rock Oil Corp.*, 343 Ill. 388.) "Persons engaged in the business of selling tangible personal property at retail" is a general class which the exemptive provision has in effect subclassified according to the nature of the purchaser. The legislative intent is clear that the retailers' occupation tax should apply to that specific class of persons engaged in the business of selling tangible personal property at retail or other than the purchasers named in the exemptive provision. This specific class is the same whether it is defined as we have just done or by the use of an exemption as the legislature has done. The basic question is not the manner in which the class to be taxed has been defined, however, but whether there is any reasonable basis for the classification.

The legislature in levying an occupation tax has great latitude in establishing the class to which the tax shall apply. (*Reif* v. *Barrett*, 355 Ill. 104; *Ohio Oil Co.* v. *Wright*, 386 Ill. 206; *McGrath* v. *City of Chicago*, 309 Ill. 515.) The classifications in tax statutes must be based upon real and substantial differences between persons taxed and those not taxed. (*Ohio Oil Co.* v. *Wright*, 386 Ill. 206; *City of Chicago* v. *Ames*, 365 Ill. 529.) and they must bear some reasonable relationship to the object of the legislation, (*Modern Dairy Co.* v. *Department of Revenue*, 413 Ill. 55,) or to public policy, *Reif* v. *Barrett*, 355 Ill. 104.

We do not agree with the relator's assertion that basing the classification on the identity of the purchaser shows that the classification is arbitrary and capricious. It is the common and accepted practice of persons subject to the retailers' occupation tax to quote and collect the tax separately from the selling price. In such circumstances the burden of the tax is shifted forward to the purchaser. The obvious purpose of the legislature in enacting the exemption was to protect governmental units and charities from the burden of the tax that is shifted to them. Reduced costs of government and reduced costs of charities, which relieve the State of many burdens it would otherwise be obliged to bear, will result when these purchasers can deal with retailers who are not subject to the tax. Although the classification is based in part on the identify of the purchaser, it takes into account the economic effect of the tax. We believe that such classification is not arbitrary or capricious but bears a reasonable relation to public policy.

It is also contended that the 1953 exemption in the Retailers' Occupation Tax Act and the identical and com panion exemption granted in the Use Tax Act are unconstitutional because they discriminate against the Federal government. It is well settled that uniformity may be violated by including within a class those not in fact within the class. (*Banghart* v. *Walsh*, 339 Ill. 132; *Wedesweiler* v. *Brundage*, 297 Ill. 228; *Scully* v. *Hallihan*, 365 Ill. 185:*Svithiod Singing Club* v. *McKibbin*, 381 Ill. 194,) as well as by excluding from a class those properly belonging to it. *Lippman* v.

*People*, 175 Ill. 101; *City of Chicago* v. *Ames*, 365 Ill. 529; *Ohio Oil Co.* v. *Wright*, 386 Ill. 206.

The relator has set out in full in its brief an opinion rendered on February 24, 1961, by a bench of three judges sitting in the United States District Court for the Northern District of Illinois in which it was held that Illinois may not tax retail sellers of tangible personal property with respect to sales to the United States Government or to contractors with the Government so long as Illinois exempts from the measure of that tax similar sales to the State of Illinois, its agencies, instrumentalities, municipalities and charities. (*United States* v. *Department of Revenue of Illinois*, 191 F. Supp. 723, No. 60 C 1365.) The district court found that there was no reasonable basis for putting those retailers who deal with the Federal government in a class different from those who deal with the State, its agencies, municipalities and charities. Since the exemption places those who deal with the Federal government in a class different from that of those who deal with the governmental units and charities defined in the exemption, the court held the imposition of the tax with respect to sales to or for the use of the Federal government works an unconstitutional discrimination against, and therefore, infringes, the sovereignty of the Federal government, so long as similar sales to the State, its counties, municipalities and charities do not measure the tax.

The most recent opinion of the Supreme Court on this subject is *Phillips Chemical Co.* v. *Dumas Independent School Dist.*, 361 U. S. 376, 80 S. Ct. 474, 4 L. ed. 2d 384. In that case a tax had been imposed upon the lessees of real estate and was measured by the full value of the property. The lessees of the State or one of its political subdivisions were not taxed however. The court could find no reasonable basis to support the Government's lessees being placed in a class different from that of the lessees of the State and its agencies. In holding that the tax could not be exacted from the Government's lessees the court stated. "• • • it does not seem too much to require that the State treat those who deal with the Government as well as it treats those with whom it deals itself." 361 U. S. 376, 385.

The clear holding of the *Phillips Chemical Co.* case is that those dealing with the Federal government belong to the same class as those dealing with the State and its political subdivisions. The exemption provisions in question have failed to include those who deal with the Federal government within the class to which they belong. For that reason we hold those portions of the provisions of the Retailers' Occupation Tax Act and the Use Tax Act exempting from the measure of the tax the proceeds of sales at retail to the "State of Illinois, any county, political subdivision or municipality thereof," to be unconstitutional and void.

The holding brings into issue the validity of the provisions which exempt from the measure of the Retailers' Occupation Tax and the Use Tax the proceeds of sales at retail to "any corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes." Governmental units and charities are generally exempted from taxation because such exemptions directly or indirectly tend to lower the cost of government. (See *e. g., Milward* v. *Paschen*, 16 Ill. 2d 302; *People ex rel. Brenza* v. *Turnverein Lincoln*, 8 Ill. 2d 198.) There are, however, real and substantial differences between them, one of which is the power possessed by governmental units to enforce contribution from persons and property to support their purposes, (cf. *Kough* v. *Hochler*, 413 Ill. 409; see also 31 I.L.P. Rev. § 2,) a power which charities do not possess. We hold that governmental units and those with whom they deal can be placed in a class and be treated different from charities and those with whom they deal.

The three-judge district court in the *Olin Mathieson Chemical Corp.* case stated that the Federal government is further discriminated against by the charitable exemptions in question. (191 F. Supp. 723, 729.) This statement was not necessary to the decision nor was that issue discussed in any detail. A close reading of the *Phillips Chemical Co.* case, upon which the district court relied in issuing its permanent injunction, leads us to the conclusion that it re-

quires no more than that the State treat those who deal with the Federal government as favorably as it treats those with whom it deals itself, (361 U. S. 376, 385, 80 St. Ct. 474, 480, 4 L. ed. 2d 384, 391,) and specifically reserves the question of whether a class in which the State has not been included can be given a more favorable treatment than the Federal government.

As we have mentioned, tax exemptions are often given to charities because the benefits they confer upon the public reduce the burden of government to care for and advance the interests of its citizens. While in the past charitable benevolences operated to a greater extent in reducing the burden of State and local governments, today these benevolences greatly reduce the burden of the Federal government which has and is sharing more and more the responsibilities formerly committed solely to the State and its local governments. The teaching of the *Phillips Chemical Co.* case is not that the State is prohibited from treating a class more favorably than itself, its political subdivisions and the Federal government or those who deal with them, but that there be significant differences between the two classes when the Federal government's interests are weighed in the balance. We are of the opinion that there are significant differences between those who deal with governmental units and those who deal with charities which justify treating the latter more faorably even when the Federal government's interests are weighed in the balance.

The question remaining is one of separability. We have frequently held that if those provisions of a statute which remain after the unconstitutional portion has been stricken are complete in themselves and capable of being executed wholly independently of that which is void, the invalid portion does not render the entire section or act unconstitutional unless it can be said that the legislature would not have passed the statute with the invalid portion eliminated. (*Myers* v. *Krajefska*, 8 Ill. 2d 322; *Vissering Mercantile Co.* v. *Annunzio*, 1 Ill. 2d 108; *Grasse* v. *Dealer's Transport Co.*, 412 Ill. 179.) This is true even if the valid and invalid provisions are contained in the same sentence. *Peo-*

*ple ex rel. Adamowski* v. *Wilson*, 20 Ill. 2d 568; *McDougall* v. *Lueder*, 389 Ill. 141.

The provisions of the Retailers' Occupation Tax Act and the Use Tax Act exempting the proceeds of sales at retail to governmental units is separate from and independent of the exemption of the proceeds of sales at retail to charities. The passage subsequent to our original opinion herein, of House Bills Nos. 1609 and 1610 amending section 2 of the Retailers' Occupation Tax Act and section 3 of the Use Tax Act, respectively, by removing all governmental units from the exemptive provisions of those sections, shows a definite legislative intent that the provisions relating to charities should remain.

The judgment of the circuit court of Cook County is reversed insofar as it holds the provisions of section 2 of the Retailers' Occupation Tax Act and section 3 of the Use Tax excluding from the measure of the taxes the proceeds of sales at retail to the State of Illinois, any county political subdivision or municipality thereof to be constitutional. Under the circumstances, it can be presumed that respondent will act in conformity with our decision and it will be unnecessary to remand the cause for the issuance of a writ of *mandamus* directing the respondent to expunge the offending portions of the departmental regulations.

*Judgment reversed.*